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| 10/785,128  | 02/23/2004  | Oswaldo Penuela      | PREDYN-44174         | 1666             |
| 26252   | 7590        | 12/28/2005           | EXAMINER             |                  |
| KELLY LOWRY & KELLEY, LLP<br>6320 CANOGA AVENUE<br>SUITE 1650<br>WOODLAND HILLS, CA 91367 |             |                      | TAYLOR, APRIL ALICIA |                  |
|   |             |                      | ART UNIT             | PAPER NUMBER     |
|   |             |                      | 2876                 |                  |

DATE MAILED: 12/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

**Office Action Summary**

Application No.

10/785,128

Applicant(s)

PENUELA ET AL.

Examiner

April A. Taylor

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-87 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Receipt is acknowledged of the Amendment filed 21 September 2005.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 5-14, 23-33, 41-50, 56-61, 67-73, 75-83, and 85-87 are rejected under 35 U.S.C. 102(e) as being anticipated by Cho et al (US 6,628,201) (hereinafter Cho).

Re claims 1-3, 6, 11-14, 26, 27, 32, 33, 44, 45, 49, 50, 56, 57, and 61: Cho teaches a radiation measurement alarm system including a device 2 having a unique identification and for providing information about an environmental condition, the device 2 comprises a sensor physically associated with a user for detecting predetermined environmental hazards; means associated with the sensor for notifying the user or a third party of the detection of the environmental hazard exceeding a predefined limit; wherein the device comprises a wristband; wherein the device comprises a tag attached to the user; and means for conveying information obtained from the sensor and the unique identification to a third party, wherein the conveying means comprises a radio

frequency transmitter. (See col. 9, line 1 to col. 10, line 38; and col. 12, line 48 to col. 14, line 60)

Re claims 5, 28, 46, and 58: Cho teaches wherein the sensor detects radiation (see col. 9, lines 1+).

Re claims 7, 8, 29, 30, 47, and 59: Cho teaches wherein the notifying means comprises an alarm for notifying the user of the detected environmental hazard; and wherein the alarm comprises a visual alarm (see col. 9, line 22 to col. 10, line 38).

Re claims 9, 10, 31, 48, and 60: Cho teaches wherein the alarm is operably connected to an electronic circuit that communicates with the sensor; and wherein the alarm comprises an audible alarm (see col. 9, line 22 to col. 10, line 38).

Re claims 23 and 41: Cho teaches wherein the device is removably attached to the user (see figure 3).

Re claims 24, 25, 42, and 43: Cho teaches wherein the notifying means includes an electronic circuit for communicating with a receiver not physically associated with the device; and wherein the electronic circuitry includes data storage means (see col. 9, line 22 to col. 10, line 38; and col. 12, line 48 to col. 14, line 60).

Re claims 67-71, 75, and 79-81: Cho teaches a method for monitoring environmental conditions of users in a potentially hazardous environment, comprising the steps of: assigning each user a device having a unique identification; logging each identification into a database; detecting a predetermined environmental hazard using a sensor of one or more of the devices; conveying the unique identification and sensor information from the one or more devices to a receiver; identifying the one or more

devices detecting the predetermined environmental hazard; notifying the one or more users of the identified devices of the detection of the hazard; determining if the detected hazard exceeds a predefined limit; attaching a device to each user; and wherein the device comprises a wristband. (See col. 9, line 22 to col. 10, line 38; and col. 12, line 48 to col. 14, line 60)

Re claims 72 and 82: Cho teaches wherein the sensor detects radiation (see col. 9, line 1+).

Re claims 73 and 83: Cho teaches wherein the detecting step includes detecting a user physical condition hazard (see col. 9, line 22 to col. 10, line 38).

Re claims 76 and 85: Cho teaches using a radio frequency transmitter to transmit the unique identification and sensor information from the one or more devices to the receiver (see col. 9, line 22 to col. 10, line 38; and col. 12, line 48 to col. 14, line 60).

Re claims 77 and 86: Cho teaches wherein the notifying step includes the step of activating an alarm to notify the one or more user of the detection of the hazard exceeding a predefined limit (see col. 9, line 22 to col. 10, line 38; and col. 12, line 48 to col. 14, line 60).

Re claims 78 and 87: Cho teaches the step of continuously monitoring the user in real time to create control data prior to detecting an abnormal physical condition (see col. 9, line 22 to col. 10, line 38; and col. 12, line 48 to col. 14, line 60).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cho et al (US 6,628,201) (hereinafter Cho). The teachings of Cho have been discussed above.

Cho discloses the claimed invention except for wherein the device comprises a patch attached to the user. It would have been an obvious matter of design choice to provide a patch, since applicants have not disclosed that having a patch attached to the user solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with either feature. Furthermore, it would have been obvious to artisan of ordinary skill in the art at the time the invention was made to employ the notoriously old and well known patch to the teachings of Cho in order to provide a user with a device that can easily be worn by the user.

7. Claims 15-22, 34-40, 51-55, 62-66, 74, and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cho et al (US 6,628,201) (hereinafter Cho) in view of Cobb (US 5,771,001). The teachings of Cho have been discussed above.

Cho fails to teach or fairly suggest a second sensor for detecting physical conditions of the user such as blood pressure, heart rate, temperature, oxygen level, glucose level, skin condition, blood chemistry, protein levels, carbohydrate levels, lipid levels, or genetic material levels or changes of the user; an audible or visual alarm operably connected to an electronic circuit that communicates with the second sensor; and means for conveying information obtained from the second sensor to a third party, wherein the conveying means comprises a radio frequency transmitter.

Cobb teaches a personal alarm system including a device 20 having an unique identification, the device comprising a sensor for detecting physical conditions of the user such as blood pressure, heart rate, and temperature; an audible or visual alarm operably connected to an electronic circuit that communicates with the sensor; and means for conveying information obtained from the sensor and the unique identification to a third party, wherein the conveying means comprises a radio frequency transmitter. (See col. 3, line 50 to col. 4, line 55)

In view of Cobb's teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to integrate the well known sensor for detecting physical conditions of an user and means for transmitting the detected information to an user or third party to the teachings of Cho in order to provide

additional information to the user or third party regarding the user health so that the user or third party is fully aware of the medical condition of the user.

### ***Response to Arguments***

8. Applicant's arguments filed 21 September 2005 have been fully considered but they are not persuasive.

In response to applicants' argument that the preamble requires that the claimed invention be capable of providing information about both physical conditions and environmental hazards, the examiner respectfully disagrees. The claimed invention recites a device and method for providing information (or monitoring) about a physical and/or environmental condition. The use of the terms "and/or" requires the examiner to meet one of the conditions. Therefore, the Cho reference still meets the claimed invention because the Cho reference teaches a device for providing information about an environmental condition (see rejection above).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the applicants' argues that the Office Action incorrectly relies upon the "notoriously old and well known



patch" to apply to the teachings of Cho to find obviousness. The examiner respectfully disagrees. The examiner believes that it would have been obvious to artisan of ordinary skill in the art at the time the invention was made to employ the notoriously old and well known patch to the teachings of Cho in order to provide a user with a device that can easily be worn by the user. The examiner would like to point out US Patent Application Publication Number 2002/0156654 A1 to Roe et al (a newly cited prior art) as evidence to show that it is well known in the art to provide a patch for monitoring hazardous conditions (see paragraphs 0023 and 0025).

In response to applicants' argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roe et al (US 2002/0156654 A1) disclose a system for monitoring a particular health condition of a patient.

**10. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to April A. Taylor whose telephone number is (571) 272-2403. The examiner can normally be reached on Monday - Friday from 6:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [april.taylor@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or

exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AAT

26 December 2005



**THIEN M. LE  
PRIMARY EXAMINER**